

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA)
5)
6 vs.) CR No. 03-40034
7)
8)
9)
10 CAROL EVANGELISTA)

11
12 BEFORE: The Honorable Nathaniel M. Gorton

13 DISPOSITION

14
15 United States District Court
16 Courtroom No. 2
17 595 Main Street
18 Worcester, MA 01608
19 Tuesday, February 24, 2004
20 3:15 P.M.

21 Cheryl Dahlstrom
22 Official Court Reporter
23 Moakley United States Courthouse
24 One Courthouse Way, Room 3209
25 Boston, MA 02210
Mechanical Steno - Transcript by Computer

1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY
 3 By: Mark Balthazard, AUSA
 4 One Courthouse Way
 Boston, Massachusetts 02210.
 On Behalf of the Government.

5 GOULD & ETTEMBERG
 6 By: Peter L. Ettenberg, Esq.
 7 370 Main Street
 Worcester, Massachusetts 01608.
 On Behalf of the Defendant.

10 I N D E X

11 Testimony of: Direct Cross Redirect Recross

12 JOHN DAIGNAULT
 13 by Mr. Balthazard 8 23
 by Mr. Ettenberg 17

P R O C E E D I N G S

(CONFERENCE IN LOBBY AS FOLLOWS:

THE COURT: For the record, we're in the lobby. I've asked counsel and the probation officer to come because I want to give them a head's up on what I'm thinking before we start. This could be a lengthy and contentious hearing, and I'm trying to avoid that. Maybe I won't be able to. But I want to tell you what my thinking is now. We are in the lobby, and, as I've said before, this is being recorded by my court reporter.

I have read the papers very carefully, all of the pleadings, and Doctor Daignault's report. And I've considered all of the ramifications of Mrs. Evangelista's marriage and the problems in this life. And I am convinced that she needs to go to jail for her crime, but I don't think she ought to go to jail for 18 months. I think she ought to go to jail for some time in between those two numbers.

And the way that I have decided to proceed is, first of all, I do not believe there is sufficient evidence to warrant downward departures either for aberrant behavior or for diminished capacity. I don't think she had a diminished capacity, as I understand that reason for downward departure. I don't think this was aberrant to the extent that it was over an extended period of time. She's an intelligent woman. But

1 she was overborne, it seems to me, by her husband, and she
2 does deserve some sort of consideration.

3 Therefore, I have determined that I will accept all
4 of the recommendations that Probation has offered me for
5 offense levels and so on except the two-level increase for the
6 ten victims, which counsel may be aware of -- hopefully, I
7 have the right section here. It's 2B1.1, Application Note
8 3(A)(ii) which states, "Victim means: 1), any person who
9 sustained any part of the actual loss determined under Section
10 (b)(1)."

11 I have determined that the victims, that is, the
12 creditors of this bankrupt, did not actually sustain actual
13 loss since they are going to be reimbursed -- either have been
14 or are going to be. I must be assured that they are going to
15 be reimbursed. And in that event, the two-level increase
16 under 2B1.1(b)(2)(A) --

17 MR. ETTENBERG: What was that again?

18 THE COURT: It's 2B1.1(b)(2)(A)(ii).

19 MR. ETTENBERG: Okay. Paragraph 20.

20 MR. BALTHAZARD: Paragraph 20 of the PSR.

21 THE COURT: -- which talks about adding two levels if
22 more than ten victims are involved. If I don't add those two
23 points, I end up with a total offense level of 13, with a
24 sentencing range of 12 to 18 months, and I intend to sentence
25 at the low end, 12 months and one day.

1 Now, counsel can proceed and try to dissuade me of
2 that conclusion, but that's where I am now.

3 MR. ETTENBERG: Okay.

4 THE COURT: I don't think that Mr. -- is it Mr. or
5 Doctor --

6 MR. ETTENBERG: Doctor.

7 THE COURT: -- Doctor Daignault is going to convince
8 me that this particular Mrs. Evangelista suffers from an
9 impaired mental capacity.

10 MR. ETTENBERG: I can tell you, Judge -- and I'll
11 save what I'm going to say out in the courtroom. But just to
12 give you the head's up like you've given us, that isn't my
13 strongest argument, and it wouldn't be, in trying to get you
14 to the departure area. I would have focused and I would still
15 focus on the aberrant behavior aspect of it, and I have some
16 arguments to make for that.

17 I can't disagree with you with regard to your
18 perception of Doctor Daignault. I don't think it rises to the
19 clear diminished capacity, and I don't even think he'd say
20 that if Mr. Balthazard asked him. I think his report is more
21 an overview of what he perceived her mental status to be and
22 what it is now and what types of things she was going through
23 at the time of all of this and then just come to his
24 conclusions and make his recommendations for further treatment
25 and counseling and things like that.

1 I wasn't really going to focus on the diminished
2 capacity aspect. I absolutely agree it's not --

3 THE COURT: It seemed that your -- well, maybe I'm
4 telescoping the two sets of briefs. It seems that the briefs
5 spent a lot of time on that diminished capacity.

6 MR. ETTEBERG: It did because -- I agree with that.
7 But I don't think that's my strongest argument, quite frankly.

8 I've also -- just so you can know, I've talked to Mr.
9 Balthazard this afternoon, and I'm prepared to concede, for
10 whatever it's worth in here, the arguments on role in the
11 offense and the -- which guideline manual should apply. I had
12 made those arguments and made objections --

13 THE COURT: You mean that she's not entitled to a
14 four-level reduction for minimal participation and/or that
15 it's the 2001 guideline that applies, not the 2003?

16 MR. ETTEBERG: Yes.

17 THE COURT: That saves us some time. Mr. Balthazard,
18 did you want to say anything in this regard?

19 MR. BALTHAZARD: I think I'm going to want to think
20 about it for a few minutes as to whether it makes sense to --

21 THE COURT: Put Mr. Daignault on?

22 MR. BALTHAZARD: -- put him on or not. I'm not sure.
23 I think I'd like an opportunity to speak to Mr. Ettenberg
24 outside a few minutes to see how it might proceed.

25 THE COURT: I'll give you a few minutes. Anything

1 else?

2 MR. ETTENBERG: I don't think so, Judge.

3 MR. BALTHAZARD: Thank you.

4 . . . END OF LOBBY CONFERENCE.)

5

6 (The Court entered the room at 3:35 p.m.)

7 THE CLERK: Case No. 03-40034, United States vs.
8 Carol Evangelista. Counsel please note your appearance for
9 the record.

10 MR. BALTHAZARD: Good afternoon, your Honor. Mark
11 Balthazard for the government.

12 THE COURT: Good afternoon, Mr. Balthazard.

13 MR. ETTENBERG: Good afternoon, your Honor. Peter
14 Ettenberg with Carol Evangelista.

15 THE COURT: Good afternoon to you, Mr. Ettenberg and
16 Miss Evangelista. We also have Miss Roberts from Probation.
17 Good afternoon to her.

18 We're here on the sentencing of Ms. Carol
19 Evangelista. And I have also allowed the government's motion
20 for an evidentiary hearing in connection with this sentencing.
21 And I understand counsel would like to put on -- is it Doctor
22 Daignault, is that correct?

23 MR. BALTHAZARD: I'm not sure of the pronunciation.
24 I understand it's Doctor Daignault. Yes, your Honor. The
25 government would like to call Doctor Daignault. I believe, in

1 light of the conference, we would be able to keep it fairly
2 brief.

3 THE COURT: Then Doctor Daignault will please come
4 forward.

5 JOHN DAIGNAULT, Sworn

6 THE CLERK: Please be seated. Please state your name
7 and spell your last name for the record.

8 THE WITNESS: Sure. My name is John Daignault. The
9 name is spelled D-A-I-G-N-A-U-L-T.

10 DIRECT EXAMINATION BY MR. BALTHAZARD:

11 Q. Good afternoon, Doctor Daignault.

12 A. Good afternoon, sir.

13 Q. Thank you for coming today.

14 Now, can you tell us, first, what psychological
15 disorder Ms. Evangelista currently suffers from?

16 A. Currently?

17 Q. Yes.

18 A. Major depressive disorder.

19 Q. When did it start exactly?

20 A. I would estimate that it started in or around the year of
21 2000.

22 Q. But you're not sure?

23 A. I'm not positive in terms of ascribing a certain date,
24 no. That wouldn't be possible.

25 Q. You were contacted in December of 2003 by Fran Bowman to

1 prepare a report for Ms. Evangelista?

2 A. No.

3 Q. Okay. How were you initially contacted to get involved
4 in this case?

5 A. I was contacted by Fran Bowman but not for the purpose of
6 preparing a report, for the purpose of evaluating Miss
7 Evangelista.

8 Q. How was that contact undertaken?

9 A. That's a good question.

10 Q. Does that mean --

11 A. It may have been by a telephone call.

12 Q. It was not the email you received in December?

13 A. That was subsequent to what I believe was a telephone
14 call.

15 Q. Had you done work with Fran Bowman before this case and
16 since she left the Probation Office?

17 A. Let's see. I think that's a two-prong question. I may
18 have actually dovetailed with her on occasions when she was in
19 the Probation Office. I've had the occasion to be asked by
20 her on perhaps three or four occasions to evaluate clients.

21 Q. In connection with sentencings?

22 A. Yes.

23 Q. You charged approximately the same fee for each one of
24 those?

25 A. Same hourly fee, yes. I haven't gone up on my fees since

1 I've known her, no.

2 Q. And you expect -- your plan or hope is to continue to get
3 referrals from Fran Bowman in similar types of cases?

4 A. Well, I'm very busy but I wouldn't say no to a referral.

5 Q. How far a drive was it from your office to get out here?

6 A. I'd say about an hour and a half.

7 Q. When you met with Ms. Evangelista, did she meet you in
8 your office?

9 A. Yes, sir.

10 Q. Were you aware that when Ms. Bowman first contacted you
11 that Ms. Evangelista was already seeing another mental health
12 professional, Catherine Davis, in Worcester?

13 A. I don't recall if Fran Bowman told me that, but Miss
14 Evangelista told me that.

15 Q. Your evaluation of Ms. Evangelista did not include any
16 independent tests, did it, such as the M.M.P.I.?

17 A. Did not include any psychological tests such as the
18 M.M.P.I.

19 Q. That is a test that you're familiar with?

20 A. It is.

21 Q. And that you've given in the past to other defendants?

22 A. In certain cases, yes.

23 Q. In preparing your report, you did no independent
24 investigation as to what Ms. -- as to whether what Ms.
25 Evangelista had told you about her marriage and divorce was

1 true?

2 A. No, sir, that's not correct.

3 Q. What independent investigation did you do?

4 A. I asked for collateral sources of information, and I
5 received them from three family members, a friend and her
6 employers, for the purpose of verifying information.

7 Q. Those letters were pretty much confined to the period
8 during which she was going through the divorce, is that
9 correct?

10 A. You mean when they were written?

11 Q. No, the period of time in which they describe her
12 condition, if you will, or her behavior.

13 A. No, I don't -- that would not be my recollection of those
14 letters necessarily, no.

15 Q. Did they describe particular instances of interaction
16 between Ms. Evangelista and her ex-husband?

17 A. I don't recall at the moment.

18 Q. The letters speak for themselves?

19 A. They do. Yes, I relied on them as they were written,
20 yes.

21 Q. You didn't contact her ex-husband, did you?

22 A. No.

23 Q. You do recognize that he might have a different view as
24 to the facts and circumstances of the marriage?

25 A. He might. I do a fair amount of probate and family court

1 work. I would expect that.

2 Q. That's typically the case, that the husband and wife
3 don't necessarily see eye to eye as to the way the marriage
4 progressed?

5 A. Particularly cases that would come to my referral, yes,
6 that would be true.

7 Q. In the course of preparing your report and reaching your
8 conclusions, did you review the bankruptcy documents that Ms.
9 Evangelista signed?

10 A. No. I relied upon the government's version of the
11 events. I didn't see that attached.

12 Q. Did you listen to the tape of the bankruptcy meeting of
13 creditors in which she testified?

14 A. No. Again, I relied on the government's version of the
15 events.

16 Q. Do you not think that it might have been helpful to
17 actually hear her in the process of committing the offense to
18 be able to evaluate what she told you happened?

19 A. Well, to be honest, I've come to find the government's
20 version of offenses to be rather thorough, so I guess no.

21 Q. So actually listening to her voice, the tone in her
22 voice, how she answered questions, the demeanor that you could
23 have picked up actually listening to her, you say it would
24 have made no difference to you in any conclusions you drew?

25 A. I didn't say no difference. I said I've learned to rely

1 on the government's version of offenses. I find them to be
2 thorough and helpful.

3 Q. So you have no idea how she sounded during that
4 proceeding?

5 A. No, I don't.

6 Q. You don't believe the government's version actually
7 described how she sounded during the tape?

8 A. Not to my recollection, no.

9 Q. You stated in your report that it was your clinical view
10 that certain elements of what is known as Battered Women's
11 Syndrome were operative in her mental functioning to the
12 extent that she perceived her husband as fully in control and
13 herself as helpless and powerless, in effect?

14 A. Yes, sir.

15 Q. You're not saying that she actually suffered from
16 Battered Women's Syndrome, are you?

17 A. No. I'm saying that there are elements of that
18 condition, as we know it as a syndrome, that are present in
19 her psychological functioning, as you read.

20 Q. There was -- I gather from your report that there were no
21 allegations of physical abuse in the marriage?

22 A. No, sir. That's correct.

23 Q. You understand, do you not, that all of the offense
24 conduct in connection with her crime took place after the
25 marriage?

1 A. All of the offense conduct, yes, I do.

2 Q. When she was -- you understand that that was when she was
3 no longer under her husband's control and able to make her own
4 choices as to what actions she would or would not take?

5 A. From a psychological standpoint, I would not agree with
6 that statement. I'm sure that's true legally but not in my
7 world or my analysis of her.

8 Q. Did you contact Ms. Evangelista's divorce attorney?

9 A. I did not.

10 Q. She alleges that her divorce attorney was involved in and
11 encouraged her to commit bankruptcy fraud, is that correct?

12 A. Yes, that's correct.

13 Q. Did she provide a rationale as to why her own divorce
14 attorney would have counseled her to commit a federal felony?

15 A. No. I wouldn't expect someone I was evaluating to know
16 what would be in the mind of an attorney. What she described,
17 as I outlined in my report, were a series of meetings that
18 were held between her husband's attorney and her attorney
19 apparently at the Probate and Family Court office. And she
20 described, as I outlined in my report, what the conversations
21 were as she recalled them.

22 Q. Did you question her as to why she thought her divorce
23 attorney would have advised her and encouraged her to commit a
24 federal felony?

25 A. No. I did not ask her that specific question.

1 Q. You didn't consider questioning whether that, in fact,
2 took place was important to do?

3 A. Well, it's important. But what's important from a
4 psychological standpoint is what the individual perceives and
5 experiences about the events that take place in their life.
6 And that's the bottom line with respect to my diagnosis of
7 her.

8 Q. Is it your opinion that Ms. Evangelista was unable to
9 understand that what she was doing was wrong or exercise the
10 power of reason when she committed her events?

11 A. I think she was impaired in that capacity by a major
12 depressive disorder, significantly impaired.

13 Q. Was she or was she not able to understand that what she
14 was doing was wrong?

15 A. Well, sometimes -- I can't answer that yes or no. I
16 would have to explain.

17 Q. So you cannot testify that your opinion is that she could
18 not understand that what she was doing was wrong?

19 A. It's the -- I can't answer that one yes or no either.
20 I'm sorry.

21 Q. You realize that when she signed the bankruptcy schedules
22 that directly under her signature is a statement that says
23 that the penalty for making a false statement or concealing
24 property is a fine of up to \$500,000 or imprisonment for up to
25 five years or both and a citation to a federal criminal

1 statute?

2 A. Yes. I read that in your office's offense conduct
3 version, I believe.

4 Q. Is it your opinion that Ms. Evangelista was unable to
5 control behavior that she knew was wrongful?

6 A. I can't answer that yes or no, with all respect.

7 Q. You understand that she had access to funds when she was
8 working at the tanning salon during that same period of time,
9 right?

10 A. Did I know she had access to funds?

11 Q. Yes.

12 A. Yes. Her employers informed me of that, yes.

13 Q. So you understand that she apparently was able to control
14 her actions and not steal funds from her employer?

15 A. Her employers indicated in their letter that she was
16 regarded as very trustworthy, and they never seemed to have
17 that problem with her.

18 Q. That record indicated that she clearly, during that
19 period of time, understood the difference between right and
20 wrong and was able to control her conduct and conform it to
21 the law?

22 A. It certainly would imply that in that situation. Her
23 behavior otherwise would be aberrant.

24 Q. Excuse me?

25 A. Her behavior other than that would be aberrant.

1 MR. BALTHAZARD: No further questions, your Honor.

2 THE COURT: Cross-examination, Mr. Ettenberg.

3 MR. ETTEBERG: Thank you, Judge.

4 CROSS-EXAMINATION BY MR. ETTEBERG:

5 Q. Doctor Daignault, before I forget, Mr. Balthazard asked
6 you about the wrongfulness of Miss Evangelista's conduct. You
7 said you couldn't answer it yes or no. Could you explain for
8 the Court what you meant by that and what your answer would
9 be?

10 A. Well, it's the age-old problem of the difference between
11 psychology and the law. The law tends to -- in my forensic
12 training, tends to look and need to look at things in black
13 and white, more of an absolute way. Somebody is guilty or not
14 guilty, black or white. Whereas, psychology has the focus on
15 a wide range of ambiguity in human behavior as well as the
16 motivation having more than one source -- motivation for one's
17 behavior having more than one source. So it's not always easy
18 to answer yes or no in absolute terms.

19 What I was trying to say is that there's clearly --
20 from a psychological standpoint, there's clearly an
21 impairment, because of her major depressive disorder, in her
22 understanding that what she did was wrong. There's no
23 question in my mind that there was an impairment, significant
24 impairment, in her ability. And so that's what I was trying
25 to say in answering his question. I couldn't answer it yes or

1 no.

2 Q. Does that also apply in your answer to his question with
3 regard to her inability to control her conduct?

4 A. Exactly, yes.

5 Q. It's essentially based on her significant psychological
6 impairment based on what was going on at the time of her
7 divorce?

8 A. At the time. Major depression is not sadness or
9 bereavement, when someone has a loss or some sadness that we
10 -- that human beings all go through. Major depression, one of
11 the classic symptoms, is an impairment in concentration,
12 making rational decisions, making appropriate and sound
13 decisions, being able to concentrate. There are significant
14 impairments in those capacities.

15 So at that point in time, those impairments, in my
16 judgment, impaired her capacity to make sound judgments,
17 understand what she was doing, and control her behavior.

18 Q. Having that severe depression and the impairment in her
19 cognitive abilities and her abilities to understand what was
20 happening and to prevent it from happening, would you agree
21 that that could lead to somebody doing something that they
22 might otherwise do -- might otherwise not do? I'm sorry.

23 A. We see that all the time. People end up in our offices
24 because they engage in behavior that is aberrant from their
25 norm as a result of a major psychological impairment. It

1 might be depression. It might be a different type of mental
2 disorder. But that's why they end up -- well, either --
3 oftentimes, in front of the honorable courts or in
4 psychologists' offices, because they have engaged in that type
5 of behavior as a result of a mental condition.

6 Q. So that it's clear, nobody here is claiming, and you're
7 certainly not claiming, that Miss Evangelista suffered from a
8 mental illness, is that correct?

9 A. Well, now you're getting into terminology that I would
10 need to question what you mean by that.

11 Q. Well, she wasn't insane?

12 A. That's also a legal term. I'm awfully sorry.

13 Q. Okay. Let me see if I can ask it another way. She was
14 able -- she was able to get through a day and function, is
15 that correct?

16 A. Yes, that's correct.

17 Q. She could go to work. She could function appropriately
18 at work and deal with customers and deal with her employers,
19 deal with her friends and her neighbors on a daily basis, is
20 that correct?

21 A. People with -- yes, that's correct. People with various
22 types of mental disorders appear to go through life being able
23 to carry out their -- often able to carry out their usual
24 functions.

25 Q. And, yet, still suffer from this severe depression?

1 A. Absolutely.

2 Q. And this severe depression, when you say that it impairs
3 their cognitive abilities and capacities, is there any way
4 that you can assist the Court in defining that better and give
5 us maybe an example of that?

6 A. Major depression strips the individual of motivation, of
7 energy, of hope, of the capacity to feel that they can have --
8 exert plans in their life, carry out actions in their life
9 that are productive. It reduces the individual to the level
10 of not being able to have hope and promise for their present
11 or their future.

12 That is a cognitive distortion because normal human
13 beings know, as we all sit here today, that we have power to
14 make decisions, to carry out plans, to have hope for the
15 future, to be able to make headway in our lives, accomplish
16 things. That's the normal state of mind. But someone with a
17 major depression doesn't have that ability. It's lost because
18 of the mental disorder.

19 Q. In preparing your report, did you speak with Catherine
20 Davis?

21 A. I did not.

22 Q. Were you aware that Miss Evangelista was seeing Catherine
23 Davis not for an evaluation but for therapeutic reasons, to
24 assist her in dealing with this legal process?

25 A. What I know about her is that Miss Evangelista told me

1 she had consulted this therapist because of the stress she was
2 experiencing with regard to this matter, if that answers your
3 question.

4 Q. Right. It wasn't for her to prepare some report that
5 goes back in time?

6 A. Oh, no. It was for counseling.

7 Q. Counseling. And would it -- do you normally conduct an
8 independent investigation, go out and interview people in
9 these evaluations?

10 A. I normally receive collateral information that might be
11 available to the extent that that helps to verify or not
12 verify the subject's discussion with me. Cases vary in what
13 might be available.

14 In this particular case, I had a good deal of
15 information available from the collateral sources that I
16 mentioned to your brother counsel.

17 Q. You mentioned that your evaluation of Miss Evangelista
18 led you to conclude that there were elements of a Battered
19 Women's Syndrome?

20 A. Yes, the elements, the hopelessness, the helplessness,
21 the ineffectiveness upon her environment as a result of what
22 she perceived to be her relationship with the husband.

23 Q. A Battered Women's Syndrome doesn't require physical
24 contact, does it?

25 A. No, it does not. There's a lot of discussion in our

1 literature about psychological types of Battered Women's
2 Syndrome, being bona fide Battered Women's Syndrome. But I
3 answered your brother counsel by saying I did not diagnose her
4 in any formal way with Battered Women's Syndrome. Her
5 diagnosis is major depressive disorder.

6 As I mentioned to the Honorable Court a moment ago,
7 there are overlaps in diagnoses. There's ambiguity in my
8 science. I am saying that there are elements of Battered
9 Women's Syndrome, but the primary diagnosis is major
10 depressive disorder.

11 Q. You were aware, were you not, that in this particular
12 case a check, the divorce settlement check, in the amount of
13 approximately \$110,000, ultimately went to Miss Evangelista's
14 parents, minus some money. I think it was \$94,000, somewhere
15 around there. Are you aware of that?

16 A. Well, I believe father, actually, not parents.

17 Q. Right. There was a check that went to her parents.

18 Are you also aware that that check never actually was
19 handed to Miss Evangelista?

20 A. Yes. I'm aware of that and that was significant to my --

21 MR. BALTHAZARD: I'm going to object to this.

22 THE COURT: Sustained. A little far afield, Mr.
23 Ettenberg.

24 MR. ETTEBERG: There is a point to this, Judge, and
25 I can just get right to it.

1 THE COURT: All right.

2 Q. Is there any significance to the fact -- in the overall
3 opinion with regard to Miss Evangelista's mental condition, is
4 there a significance to the fact that the check never went
5 through her --

6 A. Yes.

7 Q. -- physically? What is that significance?

8 A. In my world, this is a prime illustration of the
9 cognitive distortion: out of sight, out of mind. She, in her
10 mental condition, actually cognitively experienced that the
11 check never crossed her signature, her hands, her pathway. It
12 was gone. And it was out of sight, out of mind.

13 Many times with Battered Women's Syndrome cases,
14 people scratch their heads and say how could they keep doing
15 something like that, keep going back. There is a cognitive
16 distortion that exists as a symptom, in her case, of a major
17 depressive disorder.

18 MR. ETTEMBERG: Thank you, Doctor.

19 MR. BALTHAZARD: May I follow up just one area, your
20 Honor?

21 THE COURT: Yes, redirect.

22 REDIRECT EXAMINATION BY MR. BALTHAZARD:

23 Q. Are you aware that Ms. Evangelista, on a monthly basis,
24 received \$1,000 in child support plus an additional \$1,000
25 from her ex-husband during the time she was going through the

1 bankruptcy?

2 A. It's a good question.

3 Q. Are you aware of that?

4 A. I am not --

5 Q. Are you or not?

6 A. I can't answer it yes or no.

7 Q. Were you aware of it at the time you prepared your
8 report?

9 A. I want to answer you.

10 Q. Why don't you just answer it any way you want.

11 A. There is a discrepancy. I was aware of the \$1,000 child
12 support. I saw in your memorandum from your office about a
13 \$1,000 alimony. But Miss Evangelista indicates that there
14 isn't \$1,000. That's what I was trying to say to you.

15 Q. Are you aware that there were actually checks that were
16 issued that went to her?

17 A. Yes.

18 Q. And those went through her hands?

19 A. Yes.

20 Q. Are you aware that she did not disclose those in her
21 bankruptcy schedules?

22 A. Yes.

23 Q. So she lied on her bankruptcy schedules about money that
24 went directly through her hands?

25 A. Depending on what you mean by "lying." She was not